



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter Of: E. Huttenbauer & Son, Inc.

File No.: B- 258018.2

Date: February 21, 1995

DECISION

E. Huttenbauer & Son, Inc. protests the Defense Logistics Agency's determination not to exercise an option under E. Huttenbauer's current contract awarded under request for proposals No. DLA13H-92-R-9073. Huttenbauer argues that the agency's decision was based on responsibility-type grounds and that since Huttenbauer is a small business the matter has to be referred to the Small Business Administration (SBA) for a final decision.

We dismiss the protest.

Contract options are exercised solely at the discretion of the government; a contractor cannot compel an agency to exercise an option in its contract, California Shorthand Reporting, B-236680, Dec. 22, 1989, 89-2 CPD ¶ 584, and those who bid on contracts containing option provisions assume the risk that the agency might not exercise the option. Arlington Public Schools, B-228518, Jan. 11, 1988, 88-1 CPD ¶ 16. In this regard, while Federal Acquisition Regulation § 17.207 imposes prerequisites for the exercise of an option, it imposes no conditions that must be satisfied before an agency can decide not to exercise an option. Thus, while the protester correctly states that the SBA has the conclusive authority to determine the responsibility of a small business for the purpose of receiving and performing a contract, there is no post-award requirement that an agency make a referral during contract performance or prior to deciding not to exercise a contract option.¹

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¹Although the protester cites DOD Contracts, Inc., B-250603.2, Mar. 3, 1993, 93-1 CPD 195, in support of a contrary conclusion, that decision, involving an agency's decision not to exercise an option and instead award a sole-source contract on the basis of urgency to the only source known to be capable of performance, stands only for the position that certificate of competency referral is not required in such circumstances.